

claimed or the recommendation of the FCC forwarding the claim; or, if a claim is forwarded to USARCS for approval of payment in excess of \$50,000, refer the claim back to the FCC or another FCC for further action.

(f) Payments in excess of \$100,000 will be approved by the Secretary of the Army, the Army General Counsel as the Secretary's designee, or other designee of the Secretary.

(g) Following approval where required and receipt of an agreement by the claimant accepting the specific sum awarded by the FCC, the claim will be processed for payment in the appropriate currency. The first \$100,000 of any award will be paid from Army claims funds. The excess will be reported to the Financial Management Service, Department of the Treasury, with the documents listed in DA Pam 27-162, paragraph 2-81.

(h) If the settlement authority upholds a final offer or authorizes an award on appeal from a denial of a claim, the notice of the settlement authority's action will inform the claimant that he or she must accept the award within 180 days of the date of mailing of the notice of the settlement authority's action or the award will be withdrawn, the claim will be deemed denied, and the file will be closed without future recourse.

§ 536.144 Reopening a claim after final action by a Foreign Claims Commission.

(a) *Original approval or settlement authority (including TAJAG, TJAG, Secretary of the Army, or the Secretary's designees).* (1) An original settlement authority may reconsider the denial of, or final offer on a claim brought under the FCA upon request of the claimant or the claimants authorized agent. In the absence of such a request, the settlement authority may reconsider a claim on its own initiative.

(2) An original approval or settlement authority may reopen and correct action on an FCA claim previously settled in whole or in part (even if a settlement agreement has been executed) when it appears that the original action was incorrect in law or fact based on the evidence of record at the time of the action or subsequently re-

ceived. For errors in fact, the new evidence must not have been discoverable at the time of final action by either the Army or the claimant through the exercise of reasonable diligence. Corrective action may also be taken when an error contrary to the parties' mutual understanding is discovered in the original action. If it is determined that the original action was incorrect, the action will be modified, and if appropriate, a supplemental payment made. The basis for a change in action will be stated in a memorandum included in the file. For example, a claim was settled for \$15,000, but the settlement agreement was typed to read "\$1,500" and the error is not discovered until the file is being prepared for payment. If appropriate, a corrected payment will be made. A settlement authority who has reason to believe that a settlement was obtained by fraud on the part of the claimant or the claimant's legal representative, will reopen action on that claim and, if the belief is substantiated, correct the action. The basis for correcting an action will be stated in a memorandum and included in the file.

(b) *A successor approval or settlement authority (including TAJAG, TJAG, Secretary of the Army, or the Secretary's designees)—(1) Reconsideration.* A successor approval or settlement authority may reconsider the denial of, or final offer on, an FCA claim upon request of the claimant or the claimant's authorized agent only on the basis of fraud, substantial new evidence, errors in calculation, or mistake (misinterpretation) of law.

(2) *Settlement correction.* A successor approval or settlement authority may reopen and correct a predecessor's action on a claim that was previously settled in whole or in part for the same reasons that an original authority may do so.

(c) *Time requirement for filing request for reconsideration.* Requests postmarked more than five years from the date of mailing of final notice will be denied based on the doctrine of laches.

(d) *Finality of action.* Action by the appropriate authority (either affirming the prior action or granting full or partial relief) is final under the provisions of 10 U.S.C. 2735. Action upon request for reconsideration constitutes final

administrative disposition of a claim. No further requests for reconsideration will be allowed except on the basis of fraud.

§ 536.145 Solatia payment.

Payment of solatia in accordance with local custom as an expression of sympathy toward a victim or his or her family is common in some overseas commands. Solatia payments are known to be a custom in the Federated States of Micronesia, Japan, Korea, and Thailand. In other countries, the FCC should consult the command claims service or Commander USARCS for guidance. Such payments are not to be made from the claims expenditure allowance. These payments are made from local operation and maintenance funds. This applies even where a command claims service is directed to administer the command's solatia program. See, for example, United States Forces Korea Regulation 526-11 regarding solatia amounts and procedures.

Subpart K—Nonappropriated Fund Claims

§ 536.146 Claims against non-appropriated fund employees—generally.

This subpart sets forth the procedures to follow in the settlement and payment of claims generated by the acts or omissions of the employees of nonappropriated fund (NAF) activities. NAF activities include NAF or Army and Air Force Exchange Service (AAFES) facilities, post exchanges, bowling centers, officers and non-commissioned officers' clubs, and other facilities located on land or situated in a building used by an activity that employs personnel compensated from NAFs.

§ 536.147 Claims by NAFI employees for losses incident to employment.

Claims by employees for the loss of or damage to personal property incident to employment will be processed in the manner prescribed by AR 27-20, chapter 11 and will be paid from NAFs in accordance with § 536.152.

§ 536.148 Claims generated by the acts or omissions of NAFI employees.

(a) *Processing.* Claims arising out of acts or omissions of employees of NAFI activities will be processed and settled in the manner specified for similar claims against the United States, except that payment will be made from NAFs in accordance with AR 215-1 (Morale, Welfare, and Recreation Activities and Nonappropriated Fund Instrumentalities) and § 536.152 of this part.

(b) *Procedural requirements.* Procedural requirements of this part's pertinent subparts, as stated below, will be followed except as provided in §§ 536.151 and 536.152. However, when the Nonappropriated Fund Instrumentality (NAFI) is protected by a commercial insurer (for example, flying and parachute activities), the claim will be referred to the insurer as outlined in § 536.148(d). See Department of Defense Directive (DODD) 5515.6, dated November 3, 1956, posted on the USARCS Web site (see § 536.2(a)).

(1) Claims arising within the United States, its territories, commonwealths, or possessions. Such claims will be processed in the manner prescribed by subparts C, D, E, F, H or J of this part, as appropriate.

(2) Claims arising outside the United States, its territories, commonwealths, or possessions. Such claims will be processed in accordance with the provisions of applicable Status of Forces Agreements (SOFAs) or in the manner prescribed by subparts C, D, E, F, H or J of this part, as appropriate.

(c) *Reporting and investigation.* Such claims will be investigated in accordance with AR 215-1 and subpart B of this part.

(1) *Reporting.* Personal injury, death, or property damage resulting from vehicular collisions, falls, falling objects, assaults, or accidents of similar nature will be reported immediately to the person in charge of the NAFI or activity at which it occurred. The report should be made by the employee who initially received notice of the incident, even if the individual involved denies sustaining personal injury or property damage. Upon receipt of the report of the incident, the person in charge of the NAF activity concerned